IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.37 of 1994

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA **Sd/-**

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
SATISH DIAMONDS - Respondent(s)

==========

Appearance :
MRS MM BHATT for Applicant No(s).: 1.
MR MANISH J SHAH for MR JP SHAH for Respondent No(s): 1

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 24/08/2005
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following question under Section 256(1) of the Income-tax Act, 1961 (the Act) at the instance of the Commissioner of Income-tax:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the order of the Dy. CIT (A) deleting the interest charged by the ITO u/s 217 of the Act ?"

2. The Assessment Years are 1979-80 and 1980-81. The respective accounting periods are Samvant Years 2034 and 2035. The Assessing Officer issued direction to charge interest under Section 217(1)(b) of the Act for both the Assessment Years.

3. The assessee carried the matter in appeal before the Dy. CIT (Appeals), who applied the ratio of Gujarat High Court decision in case of *Commissioner of Income-tax, Gujarat-II Vs. Bharat Machinery and Hardware Mart*, [1982] 136 ITR 875 and held that the Assessing Officer was not justified in levying interest under Section 217(1A) of the Act.

4. The Revenue carried the matter in appeal before the Tribunal and vide order dated 31st December, 1992 the Tribunal has rejected the ground raised by the Revenue regarding charging of interest under Section 217 of the Act.

5. Heard Mrs.M.M.Bhatt, learned Standing Counsel for the applicant-Revenue and Mr.M.J. Shah, learned advocate for the respondent-assessee.

6. As can be seen from the record the Assessing Officer rejected the book results by invoking provisions of Section 145 of the Act and estimated the net income of the assessee for the first year at a sum of Rs.1,00,000/-, and a sum of Rs.90,000/- for the second year. The assessee succeeded partly before Dy. CIT (Appeals). For Assessment Year 1979-80 the Dy. CIT (Appeals) estimated the net profit at Rs.60,000/- as against Rs.1,00,000/- estimated by the Assessing Officer. Similarly, for Assessment Year 1980-81 the Dy. CIT (Appeals) gave partial relief and modified the estimate directing the Assessing Officer to take income from business at Rs.36,000/- plus Rs.12,000/- from dalali. The assessee's appeal in relation to the partial retention was not accepted by the Tribunal for both the years and the estimates made by the Dy. CIT (Appeals) for both the years came to be confirmed.

7. In light of the aforesaid backdrop of fact situation, it is apparent that the orders of Dy. CIT (Appeals) and the Tribunal holding that the assessee could not have anticipated the estimated income which came to be finally assessed and was not thus liable to be charged interest for any default under Section 217 of the Act, appears to be correct. It is an accepted fact on record that there were various discrepancies in the books of account and hence, the books were rejected by the Assessing Officer and the assessee assessed on estimated income for both the years under consideration. As to what would such estimate be would be in the realm of conjectures and guesswork and the assessee cannot be faulted with if it did not anticipate what estimate the Assessing Officer would make. In fact the estimate made by the Assessing Officer was not sustained and partial relief was granted by the Dy. CIT (Appeals). In such circumstances, there is no infirmity in the concurrent findings recorded by the first appellate authority and the Tribunal deleting the interest charged under Section 217 of the Act.

8. Accordingly, it is held that the Tribunal was right in law in confirming the order of Dy. CIT (Appeals) deleting the interest charged by the Assessing Officer under Section 217 of the Act. The question is, accordingly, answered in the affirmative i.e. in favour of the assessee and against the Revenue.

9. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

***

*Bhavesh**